

## **REMARKS**

Claims 9-33 are currently pending. Claims 1-8 are canceled. Claims 9-24 are currently amended. The amendment to claims 9-24 may be found throughout the specification and at least on page 8, paragraphs 2-3. Claims 27-33 are new but represent claims 1-8 newly presented as dependent claims to claim 9. Claim 34 is new and support may be found throughout the specification and at least on page 9, paragraph 2, lines 18-19. No new matter is introduced. Reconsideration of the application in view of the current claims is respectfully requested and further in view of the following Remarks.

### **I. INFORMATION DISCLOSURE STATEMENT**

Applicants acknowledge, with appreciation, the Examiner's indication that the references submitted in the Information Disclosure Statement filed April 13, 2004 have been considered.

### **II. CLAIM REJECTION UNDER 35 U.S.C. § 112, FIRST PARAGRAPH**

The Examiner has rejected claim 9 under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The Examiner asserts that:

Claim 9 is rejected because the specification, while enabling for particular types of gluten-free premixes and broth, does not reasonably provide enablement for any and all types of gluten-free pre-mixes and broths. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make the invention commensurate in scope with these claims. Office action, 12/13/2006, page 2, para 5.

Applicants respectfully traverse the rejection as claim 9 as currently amended, provides sufficient, relevant, identifying characteristics to enable the full scope of the gluten free crisp as claimed.

As summarized in the MPEP § 2163, "[t]he first paragraph of 35 U.S.C. § 112 requires that the 'specification shall contain a written description of the invention \* \* \*.' This requirement is

separate and distinct from the enablement requirement. See, e.g., *Vas-Cath, Inc. v. Mahurkar*, 935 F.2d 1555, 1560, 19 USPQ2d 1111, 1114 (Fed. Cir. 1991)". The MPEP 2163 II further states:

An adequate written description of the invention may be shown by any description of sufficient, relevant, identifying characteristics so long as a person skilled in the art would recognize that the inventor had possession of the claimed invention.

Thus, the issue is whether the original application provides adequate support for the claim.

Claim 9 recites:

A gluten-free crisp comprising a gluten-free premix comprising a mixture of gluten-free seeds, quinoa flakes and spices, an organic oil, and a gluten-free broth. See claim 9.

The claim as amended clearly envisions the three basic components of the crisp. The gluten-free premix, as stated in amended claim 9 recites elements of gluten-free seeds, quinoa flakes and spices. Further, the element of a gluten-free broth is described both in the definitions section (see page 6, lines 36-36) and on page 7, line 26 to page 7, line 4. The crisp is described in several places throughout the specification

This clearly describes relevant and identifying characteristics to enable a person skilled in the art to recognize possession by Applicants.

Based on the reasons provided above, withdrawal of the rejection of claim 9 under 35 U.S.C. 112, first paragraph, is respectfully requested.

### **III. CLAIM REJECTION UNDER 35 U.S.C. § 112, SECOND PARAGRAPH**

The Examiner has rejected claims 1 and 24 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention. As claim 1 is now canceled, its rejection is obviated.

The Examiner asserts:

"Claim 24 is indefinite in the use of the phrase 'rolling out . . . into a coil'. It is not seen how rolling out a ball would make a coil. Rolling out a ball would make a flat piece of dough or at least a roll." See Office Action, 12/13/ 2006, page 2, para 2.

Applicants respectfully traverse the rejection. Claim 24 is not indefinite in its usage of the phrase 'rolling out . . . into a coil', but consistently and clearly uses that terminology throughout the specification and claims. One of average skill in the art can interpret the claim to practice the invention.

According to MPEP 2173.02:

The essential inquiry pertaining to this requirement [under 35 U.S.C. 112, second paragraph] is whether the claims set out and circumscribe a particular subject matter with a reasonable degree of clarity and particularity. Definiteness of claim language must be analyzed, not in a vacuum, but in light of:

- (A) The content of the particular application disclosure;
- (B) The teachings of the prior art; and
- (C) The claim interpretation that would be given by one possessing the ordinary level of skill in the pertinent art at the time the invention was made.

Further, according to MPEP 211.01 IV:

The specification should also be relied on for more than just explicit lexicography or clear disavowal of claim scope to determine the meaning of a claim term when applicant acts as his or her own lexicographer; the meaning of a particular claim term may be defined by implication, that is, according to the usage of the term in >the< context in the specification. See *Phillips v. AWH Corp.*, \*415 F.3d 1303<, 75 USPQ2d 1321 (Fed. Cir. 2005) (*en banc*); and *Vitronics Corp. v. Conceptor Inc.*, 90 F.3d 1576, 1583, 39 USPQ2d 1573, 1577 (Fed. Cir. 1996).

Claim 24 recites:

A method of making a gluten-free crisp comprising: mixing the gluten-free pre-mix with an organic oil, gluten-free broth, and any desired savory; forming the mixture into a ball; rolling out the ball on a surface lightly dusted with amaranth powder into a coil; cutting the coil into pieces; pressing each piece into thin evenly-sized slices; and cooking each slice on a heated grill until the crisp is lightly browned on each side. See Claim 24.

In the specification, further disclosure of this method discloses "[t]he mixture is rolled out into a coil on a surface . . . and the coil is cut into shaped slices (preferably round)." See

specification, page 8, lines 19-21. Additionally, “[t]he mixture . . . is then formed into a ball. The ball is rolled out on a flat surface . . . until the coil is approximately 1 inch in diameter. The coil is then cut into ¼ inch pieces.” See specification, page 9, line 29 to page 10, line 1.

The term “coil” can be understood in terms of its context in the specification, and permits one of ordinary skill in the art to practice the invention. One of ordinary skill in the art can indeed roll out a ball to form a coil that is cut into pieces of definite shape and thickness. Therefore, the pending claim is not indefinite.

Based on the reasons provided above, withdrawal of the rejection under 35 U.S.C. 112, second paragraph, is respectfully requested.

**IV. CLAIM REJECTIONS UNDER 35 U.S.C. § 102(B)**

The Examiner has rejected claims 4 and 6 under 35 U.S.C. § 102(b) as being anticipated by Crook et al., “The Yeast Connection Cookbook”, page 185 (hereinafter, Crook). As claims 4 and 6 have been canceled, their rejection is obviated.

**V. CLAIM REJECTIONS UNDER 35 U.S.C. § 103(A)**

**A. Claim 1 has been rejected under 35 U.S.C. § 103(a) over Hunter (The Natural Foods Cookbook, pages 35 and 34) (hereinafter “Hunter”).**

The Examiner has rejected claim 1 under 35 U.S.C. § 103(a) as being unpatentable over Hunter. As claim 1 has been canceled, the rejection is obviated.

**B. Claims 2, 3, are rejected under 35 U.S.C. § 103(a) as being unpatentable over Hunter as applied to the claims above, and further in view of Crook et al.(The Yeast Connection) (hereinafter Crook).**

The Examiner has rejected claims 2 and 3 under 35 U.S.C. § 103(a) as being unpatentable over Hunter in view of Crook. As claims 2 and 3 are now canceled, the rejection is obviated.

C. **Claims 4, 5, 7, and 8 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Crook.**

The Examiner has rejected claims 4, 5, 7, and 8 under 35 U.S.C. § 103(a) as being unpatentable over Crook. As claims 4, 5, 7 and 8 are canceled, the rejection is obviated.

D. **Claims 9-26 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Hunter, and further in view of Crook.**

The Examiner has rejected Claims 9-26 under 35 U.S.C. § 103(a) as being unpatentable over Hunter as applied to the claims above, and further in view of Crook.

1. With regard to independent claim 9, the Examiner asserts that:

Claim 9 further requires a gluten- free food containing the premix, oil and broth. Hunter as above discloses as in claim 1 the premix as being millet, wheat and sunflower seeds, the broth is potato water, oil was disclosed in the other recipes on pages 34 and 35. Therefore, it would have been obvious to make a food item from the above ingredients as shown by Hunter. See Office Action, 12/13/2006, page 6, lines 5-8.

Applicants respectfully traverse the rejection as the Examiner has not established a *prima facie* case of obviousness. According to MPEP §2143, to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Current claim 9 is unobvious over Hunter in view of Crook because all the limitations of the claims have not been taught or suggested.

Claim 9 recites a gluten-free crisp comprising "a mixture of gluten-free seeds, quinoa flakes and spices, an organic oil, and a gluten-free broth." See claim 9.

By way of background, the use of flour or gluten-containing ingredients in making crisps has a function to bind all the ingredients together in a mass. This has been one of the major problems for an individual with gluten sensitivity, as so many food items are prepared with gluten in order to obtain an adhering consistency of doughs or mixtures. Applicants have solved this problem by finding that quinoa flakes can serve as a binding element for the crisps of the invention without introducing foodstuffs that invoke a food sensitivity response from the gluten sensitive individual.

Hunter teaches grain seed wafers which consist of millet, cracked wheat, and sunflower seeds. This is not a gluten free crisp, as it contains cracked wheat. Hunter does not suggest or teach quinoa flakes as an element of a gluten-free crisp. Other recipes taught by Hunter on pages 34-35, either teach items which contain gluten, i.e. "Millet Crackers", "Cheese Crackers", "Herbed Straws", "Swedish Hardtack", and "Wheatgerm Sticks", or teach food items which contain oatmeal and cornmeal. Nowhere are *quinoa flakes* taught or suggested as an element of a gluten-free crisp. Quinoa flakes perform differently from simple use of quinoa in the gluten-free crisps of the present claim. There is no suggestion in Hunter that it would be desirable or even possible to use quinoa flakes instead of the ingredients taught, in order to arrive at the present invention.

Crook does not cure the defects of Hunter. Crook teaches cooked quinoa as a cooked grain which can be added to soups. This recipe does not teach a gluten free crisp comprising a mixture of gluten-free seeds, quinoa flakes and spices, an organic oil and a gluten free broth. Nowhere is the element of quinoa flakes taught or suggested. Crook also teaches a "Nut'N Seed Crust" which contains the elements of brazil nuts or cashews, sesame seeds, tapioca or arrowroot starch, cinnamon, and water. There is no teaching or suggestion of quinoa flakes. Neither the "Teff" or "Nut'N Seed Crust" of Crook can actually bind to form a crisp that can be removed freely from a pie tin. There is no teaching or suggestion in Crook that it would be desirable to combine or modify Hunter in order to arrive at the gluten-free crisp of the present claim containing gluten-free seeds, quinoa flakes and spices, an organic oil, and a gluten-free broth. Even if one were to somehow combine the invention of Crook and Hunter, one would not obtain the gluten-free crisp of the present claim which includes quinoa flakes. No positive, concrete evidence which gives a logical reasoning justifying a combination of references has been cited by the Examiner. See *In re*

*Laskowski*, 10 USPQ 2d 1397 (Fed Cir 1989). No teaching or suggestion has been made by the cited references that quinoa flakes can act as a binding ingredient in the gluten-free crisp of claim 9, which permits the crisp to be formed, manipulated and grilled.

As each and every claim limitation of independent claim 9 is not taught by the cited references, singly or in combination, and there is no suggestion or motivation to combine or modify the cited inventions, a *prima facie* case of obviousness has not been established. Therefore, the rejection cannot stand. Based on the foregoing, Applicants respectfully request withdrawal of the rejection under 35 U.S.C. 103(a) over Hunter in view of Crook, of independent claim 9 and claims 10-23 and 27-33 dependent upon it.

2. With regard to independent claim 24, the Examiner has stated:

Hunter discloses combining broth (potato water) and seeds, it is known to add oil as above and savories. Claim 24 differs from the reference in making the mixture into a ball and lightly dusting with amaranth powder to make a coil, cutting, and pressing the pieces. Hunter discloses making a batter and dropping onto a griddle to cook (Grain seed wafers, page 35). Amaranth powder is another flour-like material that does not contain gluten. Make a roll, shaping, slicing, and baking are disclosed under cheese crackers of Hunter (page 35). Cooking till browned is a well known cooking process. Manual process or machine processes are well known in baking as in claims 25 and 26. Therefore, it would have been obvious to use the process found in "cheese crackers" in the process of "grain seed wafers" for its known function since wafers or crackers are made in either process. See Office Action, 12/13/2006, page 7, lines 1-11.

Independent claim 24 recites a method of making a gluten-free crisp comprising:

mixing the gluten-free pre-mix with an organic oil, gluten-free broth, and any desired savory;  
forming the mixture into a ball;  
rolling out the ball on a surface lightly dusted with amaranth powder into a coil;  
cutting the coil into pieces;  
***pressing each piece into thin evenly-sized slices***; and

cooking each slice on a heated grill until the crisp is lightly browned on each side. See Claim 24.

Applicants respectfully traverse the rejection as the Examiner has not established a *prima facie* case of obviousness. Current claim 24 is unobvious over Hunter in view of Crook because all the limitations of the claims have not been taught or suggested.

Hunter teaches a method of making cheese crackers which recites the steps of combining cheese, oil, milk and “to bind, add flour and as much milk powder as mixture will hold.” See Hunter, page 35, “Cheese Crackers”, para 1. First, the method of Hunter requires flour and milk powder to bind the mixture. Therefore without the use of gluten-containing flour, the mixture of Hunter will not form into a ball as required by claim 24. Secondly, the method of Hunter does not teach the step of *pressing each slice of the roll into thin evenly sized slices*. It is not clear from Hunter that the slices of Hunter are the thin evenly sized slices of claim 24 as only the skill of the artisan can control the thickness of slices of Hunter. Further, the Examiner states that it would be obvious to combine the method of “Cheese Crackers” with the process of “Grain Seed Wafers”. However, Hunter teaches that the process of “Grain Seed Wafer” requires blending grains and seeds, that the “batter will be coarse”, and directs that the batter is “[d]ropped onto [a] hot unoled soapstone griddle”. See Hunter, page 35, “Grain-Seed Wafer”, para 1. Hunter does not teach that the batter of “Grain Seed Wafer”, which does not contain gluten-containing flour, *can* be formed into a ball, rolled out into a coil, cut into pieces, or is capable of being pressed into thin evenly sized slices as required by claim 24. Nowhere does Hunter teach that the process of “Grain Seed Wafers” provides thin evenly sized slices. There is no teaching in Hunter to suggest that modifying the method of “Grain Seed Wafers” with the process of “Cheese Crackers” is desirable or even possible. Further, Hunter does not teach or suggest that quinoa flakes can be used to bind the mixture together in a method of making a gluten-free crisp.

Crook does not cure the defects of Hunter. Crook does not teach or suggest a method of making a gluten-free crisp comprising mixing a gluten-free pre-mix with an organic oil, gluten-free broth, and any desired savory; forming the mixture into a ball; rolling out the ball; cutting the coil into pieces; *pressing each piece into thin evenly-sized slices*; and cooking each slice on a heated grill until the crisp is lightly browned on each side. There is no suggestion or motivation to



modify the teachings of Hunter with the teachings of Crook as discussed above, to arrive at the method of claim 24.

Therefore, all the claim limitations of independent claim 24 have not been taught or suggested, singly or in combination, by Hunter and Crook. Thus, a prima facie case of obviousness has not been established, and the rejection cannot stand.

Based on the foregoing, Applicants respectfully request withdrawal of the rejection under 35 U.S.C. 103(a) over Hunter in view of Crook, of independent claim 24 and claims 25-26 dependent upon it.

### CONCLUSION

In light of the remarks set forth above, Applicants believes that they are entitled to a letters patent. Applicants respectfully solicit the Examiner to expedite the prosecution of this patent application to issuance. Should the Examiner have any question, the Examiner is encouraged to telephone the undersigned.

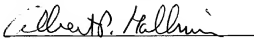
### FEE AUTHORIZATION

The Commissioner is authorized to charge any additional fees which may be required, including petition fees and extension of time fees, to Deposit Account No. **23-2415** (Docket No. 30847-701.201).

Respectfully submitted,

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